

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARTIN HARRIS, JESSE KITHCART, DENNIS CARTER.

: CIVIL ACTION

EVELYN LINGHAM, ESDRAS FOWLER and MICHAEL GRAVES :
:
v. :

:
THE CITY OF PHILADELPHIA, REV. ALBERT F. CAMPBELL,
:
ROSITA SAEZ-ARCHILLA, M. MARK MENDEL,
:
HON. PAUL M. CHALFIN and MAMIE FAINES, each in his
:
or her official capacity as a member of the Board :
of Trustees of the Philadelphia Prison System,
:
FRANK HALL, in his official capacity as :
Commissioner of the Philadelphia Prisons,
:
WILHELMINA SPEACH, in her official capacity as
:
Warden of the Detention Center
:
THOMAS A. SHIELDS, in his official capacity as
:
Warden of the House of Corrections,
:
JOSEPH CERTAINE, in his official capacity as
:
Managing Director of the City of Philadelphia,
:
HON. EDWARD G. RENDELL, in his official capacity
:
as Mayor of the City of Philadelphia
: NO. 82-1847

MEMORANDUM AND ORDER

The 1991 Consent Decree in this case provides that defendants will "conduct expeditiously" the planning process appended to the decree. (P. 11) Among the requirements of the planning process is that defendants "develop a policy and procedural system" for all of its prison facilities. (E.3) The

Consent Decree further provides that all of the plans developed by defendants, including the policy and procedural system, must be submitted to the court for approval. (P. 20)

Defendants have drafted more than 250 proposed policies and procedures. Those to which plaintiffs have not objected have been immediately submitted by the Special Master to the court for approval. In those instances in which plaintiffs have filed objections, the Special Master has met with the parties to resolve the objections and then submitted the revised policies and procedures to the court for approval.

By memorandum of June 10, 1996, the Special Master submitted to the court for approval Policy 5.A.2, Inmate Work Programs. He reported that plaintiffs had withdrawn two of their three objections and, after tabling their third objection, had not provided a further response within the allotted period of time. The Special Master recommended approval of the Policy.

On October 8, 1996, the Special Master submitted a second memorandum to the court. He reported that plaintiffs, renewing their objection, were arguing for a Policy requirement that each work assignment include "weekly hours comparable to conditions in the community for comparable full-time employment or education." Defendants rejected plaintiffs' proposal. Because the Special Master did not believe that the minimum hourly requirement advocated by plaintiffs could "reasonably be met by the Prisons," he recommended approval of the Policy over plaintiffs' objection.

Plaintiffs then requested a hearing, revised their original proposal and suggested a requirement that job, vocational training and education assignments provide a minimum of 20 hours per week, and at least 90 percent of the assignments take place outside the inmate's housing area. Defendants, rejecting plaintiffs' revised proposal, relied, in part, on the Special Master's earlier statement that plaintiffs' initial proposal could not reasonably be met by the Prisons. But

the Special Master's earlier recommendation did not mean that "there is no minimum standard that can be met." Plaintiffs' revised proposal was "very different than their original proposal." The Special Master encouraged defendants to seek agreement with plaintiffs before the scheduled hearing.

Prior to the hearing, plaintiffs modified their revised proposal so that the requirement that 90 percent of the assignments take place outside the inmates' housing areas would apply only to those inmates housed in "dormitory-style housing." At the same time, defendants proposed a revision to the Policy that would establish 20 hours of activity per week as an "aspirational goal" rather than a "mandated minimum." Defendants also proposed as a "goal" that 50 percent of those inmates housed in dormitories at the Detention Center be assigned to activities outside the housing units.

Acting Commissioner Thomas Costello ("the Commissioner") testified at the hearing on December 18, 1996, that the 20 hour minimum advocated by plaintiffs is currently met

by the Prisons about 50 percent of the time. However, the Commissioner disagreed with any minimum standard in the Policy. He argued that the Prisons need to maintain flexibility because of obstacles to compliance such as the inability to clear head counts in a timely manner and staffing shortages.¹

Plaintiffs argue that the purpose of policies and procedures is to implement the Operational Standards previously approved by the court. The Operational and Physical Standards and General Design Guidelines provide that "the Prison System will incorporate the Operational Standards into daily activities through the creation of written **policies and procedures** and the **renovation or construction of facilities**."

(Emphasis in original.) (Standards at 7.) They further provide that "[p]rocedures are a list of the activities that must occur in order for policies, and therefore standards, to be fully

¹ The Commissioner testified that one of the reasons defendants did not want to commit to a minimum hourly standard was the occasional unavailability of instructor shired to conduct the work, vocational training and education programs. In 1995, the court attempted to address the need for more vocational training slots by awarding the Prisons over \$150,000 from the penalty money fund to help fund a vocational training program administered by the Jewish Employment and Vocational Service ("JEVS"). It was disturbing to read in the JEVS quarterly report for the first quarter of 1997, that the Word Processing Program did not have an instructor for the day shift class from January 20, 1997 to March 31, 1997, and that the World of Work Program did not have an instructor throughout February and March, 1997.

The JEVS report also illustrated problems in making vocational training slots available to female inmates. For example, only one of the 30 slots in the Welding Program was assigned to a woman, none of the 22 inmates assigned to the Janitorial Program were women, none of the 28 inmates assigned to the VESL program were women, and none of the 30 inmates enrolled in the Desktop Publishing Program were women. For court approval, Policy 5.A.2, must include a clause providing that assignments to work, vocational training and education programs must be accomplished without discrimination.

implemented by the agency." (Id.)

Plaintiffs further argue that the procedures established in Policy 5.A.2 cannot fully implement either Operational Standards 17, 18 and 19 or Policy 5.A.2 without including a minimum number of hours that inmates will be assigned to work, vocational training or education programs. They insist that both the Policy and the Standards require defendants to offer activities that will provide inmates "with productive work habits and skills, keep them productively occupied during their incarceration, prepare them for work opportunities upon their release and/or provide them with marketable skills." (Policy 5.A.2 at 1.) (Compare Operational Standards at sections 17-19.)

The court does not agree with all of the positions taken by plaintiffs but does believe that, in order to implement the Operational Standards, some minimum standards need to be established in Policy 5.A.2 to measure the quantity of inmate work, vocational training and education programs provided by the Prisons. Without such objective standards, it would be impossible to determine whether the assignments provided are meaningful or assignments in name only.

The court is mindful of the need for flexibility in day-to-day operations of a prison system. However, such flexibility can be incorporated into a meaningful minimum standard; see the Stipulation and Agreement approved by the court March 31, 1995, for the operation of the ASDCU.

Plaintiffs propose that 90 percent of those inmates

housed in dormitories be provided with assignments outside their housing areas because neither the Policy nor the Operational Standards will be effectuated if inmates' are assigned only to clean their housing areas.² The court shares plaintiffs' concern that Policy 5.A.2 and the Operational Standards will not be effectuated by assigning large numbers of inmates to jobs involving nothing more than cleaning their own housing area. This concern applies to all housing areas, not just dormitory housing. To fully implement the Policy and the Operational Standards, defendants need to establish a maximum limit to the number of work assignments involving cleaning an inmate's own housing area.

The 1991 Consent Decree gives the court the authority to approve or not approve plans submitted pursuant to the planning process. It does not give the court the authority to revise a proposed plan or suggest its own Plan. Therefore, it is **ORDERED** that:

1. Policy 5.A.2 is **not approved**; and
2. Defendants are given thirty (30) days to submit a revised policy. To obtain court approval:

² Plaintiffs also argue that assignments away from the dormitories at the Detention Center will mitigate the density of the population in the dormitories, which they argue are being operated in violation of the court-approved Physical Standards. (Standard 14.01.)

The court previously has been informed by the Special Master that the issue of unit management, including the renovation of the Detention Center housing areas to accommodate unit management, is being negotiated by the parties within the context of other policies and procedures that have yet to be submitted to the court. Because it is anticipated that those negotiations will directly address plaintiffs' concern regarding the density of the dormitory population, the court declines the invitation to address that issue within the context of Policy 5.A.2.

a. The policy must provide an adequate definition of work, vocational training and education assignments, and a maximum limit on the number of work assignments involving cleaning the inmate's housing area; and include some method for keeping track of the number of staff available and the number of inmates participating;

b. The policy must bar discrimination with regard to work, vocational training and education assignments.

J.

Dated: June , 1997